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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,888	12/07/2005	Josef Zelger	HD/3-22898/A/PCT	2828

324 7590 04/15/2009

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EXAMINER
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ASDJODI, MOHAMMAD REZA

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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04/15/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

andrea.dececchis@ciba.com  
deborah.pinori@ciba.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,888	<b>Applicant(s)</b> ZELGER ET AL.	
	<b>Examiner</b> MOHAMMAD R. ASDJODI	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

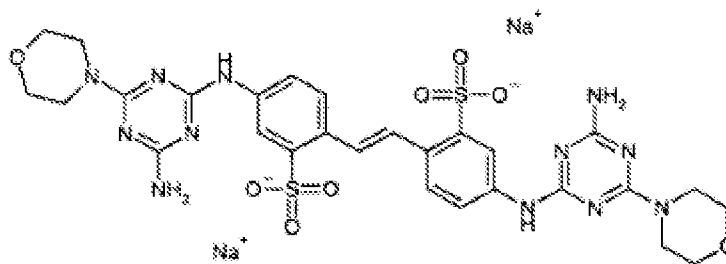
### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of elected structure (below) in the reply filed on 10/16/08 is acknowledged.



### ***Claim Rejections - 35 USC § 102***

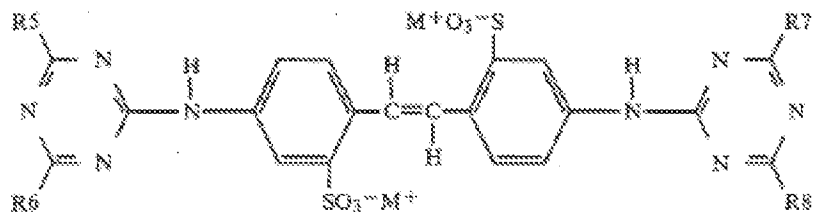
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

***A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.***

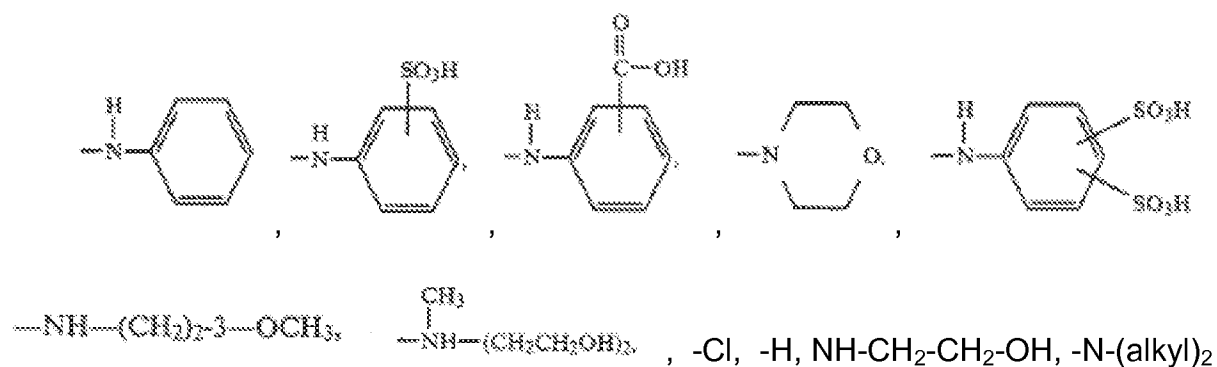
Claims 1-16, and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Petrin et al. (US 5,057,236).

Regarding claims 1-12, and 14-16, Petrin et al. teach the storage stable (3: 57-62) CC/DAS brighteners (fluorescent whitener) of the class (mono- or polysulfated) phenyl-, triazinyl stilbenes of structure below by the amount of 0.001-5%; [4: 45-67, 5: 1-24, 3: 60],

Art Unit: 1796



Wherein M= H, Na, K, or Li; and each of R5, R6, R7, and R8 are independently selected from the substituents

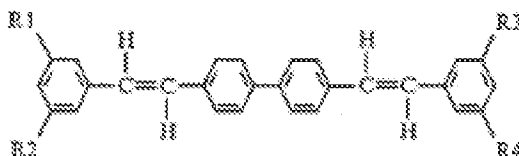


or -NH-alkyl; wherein the alkyl group contains from 1-8 carbon atoms. The structure above satisfies the structural limitation of instant claims, and selected species (where R8 is morpholino), completely. Petrin et al. teach electrolytes such as sodium hydrogen carbonate, sodium carbonate, and sodium phosphate by the amount of 0-50%; [15: 55-58], anionic poly saccharide such as xanthan gum or guar gum by the amount of 0-50%; [15: 36-37], dispersants such as anionic or nonionic surfactants (ammonium sulfosuccinate, poly acrylate, or polymaleates) by effective (desired) amount; [15: 1-3, 65-68], adjunct (or optional) ingredients such as dyes, foam booster, and pigments by the amount of 0-20%; [15: 6-11, 20: 60-64], and water to make up the rest of composition to 100%; [17: 6].

Art Unit: 1796

With respect to claims 1, 11, and 14, Petrin et al. teach at least one further fluorescent whitener, of given structure of formula (2), by the amount of 0.001-5%; [4: 45-67, 3: 60].

Regarding claim 13, Petrin et al. teach one further fluorescent whitener of formula (3) of instant claim, wherein  $R_1, R_2 = SO_3M$ , and  $R_3, R_4 = R_{10}, R_{11} = H$ ; [4: 15-35].



Regarding claims 17-18, Petrin et al. teach a method, or process, of preparing a storage stable fluorescent whitener, and detergent formulation, comprising mixing the moist centrifuged slurry (cake) with the other ingredients such as water and polysaccharides; [8: 51-68, 9: 1-10, 14: 65-68, 15: 1-40].

### ***Response to Arguments***

Applicant's arguments filed 02/12/09 have been fully considered but they are not persuasive. Because:

A- In response to applicant's argument that: "Petrin et al. (US...236) requires that M is alkaline earth metal cation, and teaches that a presence of a N-higher, N,N,N-lower alkyl ammonium cation is necessary for the composition": it is noted;

I)- Pertin not only teaches that M could be an alkaline earth metal cation, but also teaches that it can indeed be a hydrogen; [4: 32]. This meets the new limitation of amended claim 1 (see office action above).

II)- In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., presence or absence of a N-higher, N,N,N-lower alkyl ammonium) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It also should be noted that the claim language is a comprising one, and therefore composition could comprise ingredients which are additives or adjuvant.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. M. Reza Asdjodi whose telephone number is (571)270-3295. The examiner can normally be reached on Monday-Friday 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. R. A./  
Examiner, Art Unit 1796  
04/07/09

/David Wu/

Supervisory Patent Examiner, Art Unit 1796